

**ATTORNEY GENERAL’S PRELIMINARY REPORT OF INVESTIGATION
INTO FINDINGS OF AUDITOR OF ACCOUNTS CONCERNING
CHRISTINA SCHOOL DISTRICT¹**

In the summer and fall of 2006, the Auditor of Accounts (AOA) issued a series of reports concerning audits conducted of Christina School District (CSD). Two of the Audits made allegations of serious fiscal wrongdoing, including the misuse of taxpayer funds by the CSD. These two audits addressed:

- (1) the purchase of land and use of referenda funds for a new middle school, and
- (2) the use of “tuition tax” funds—funds used for special needs or non-traditional students.

A third audit issued, pertaining to “Cafeteria Funds” (as the name implies, these are funds for nutritional programs and expenses), however this Audit did not make significant findings of wrongdoing. It found that the cafeteria funds “were primarily for the purpose of child nutrition and were [DOE] allowable....” The majority of disputed charges were verified as legitimate by CSD or approved by other State agencies.

Finally, I note that AOA is currently working on additional separate audits of CSD including salary and personnel expenses. Those Audits are not concluded, have not been presented to or reviewed by my office, and we make no findings as to it. Following the issuance of the middle school and tuition tax audits, which made significant allegations of wrongdoing by the former CSD administration, my office reviewed these matters to see if any legal action was warranted and sustainable. There is a significant public interest in knowing if actionable misconduct (criminal or civil) was committed by public officials. Therefore, we initiated this review. In our review, we had the full cooperation of the Auditor’s office, access to their backup materials, and we also conducted an independent investigation, including interviews and records subpoenas. We have concluded that there is no basis for criminal prosecution or other legal action arising out of these matters.

The findings issued here today should not be taken as approval of, or validation of, the business practices or internal procedural and bookkeeping practices of the District. Indeed, AOA uncovered a number of procedural and documentation problems in the District’s records and

¹ This investigation is specifically limited to the three audits thus far completed. As additional audits of CSD are completed, further investigation by this office is anticipated.

accounting. However, we do conclude that there is no evidence of civil or criminal violations committed by the District or its former officials. Specifically, our investigation revealed that CSD received approval by appropriate State agencies (DOE/OMB/DOA) for their major expenditures, including the purchase of the middle school site, and the renovation of another school with tuition tax funds. There is no evidence of any false statements, or falsification of records, and no evidence that CSD administration tried to mislead or to hide any of their actions from state officials. There is no evidence of monies being taken or personal gain by the CSD officials.

Finally, CSD's financial shortfall has been widely reported; however, there is no evidence in these areas covered by these audits that the failings identified by the AOA directly resulted in any fiscal shortfall to the District. Again, we make no findings as to the uncompleted "Salary and Personnel Audit." It is possible that the poor business practices created the environment which lead to the shortfall, but that is not an issue for this office. Some detailed explanation of our conclusions appears in the document summarizing our investigation, presented to you today.

CHRISTIANA SCHOOL DISTRICT – CRIMINAL REVIEW

INTRODUCTION

The conclusions contained in the several audit reports issued by the AOA, the widely-reported budgetary shortfall in the District and the well-publicized remedial fiscal measures employed recently by CSD generated public concern that there may have been actionable wrongdoing by current or former CSD officials. We did not review evidence that would account for the reported “shortfall” but we note that AOA still has outstanding audits underway. The AOA’s audit reports contain numerous allegations of CSD’s failure to comply with statutes, state administrative or regulatory codes, and derelictions of standards of applicable budget and billing processes. Such findings, if valid and coexistent with certain other defined elements of criminality, might serve as predicate acts for prosecution under Delaware’s Criminal Code. The Attorney General, pursuant to his duties under chapter 25 of Title 29 of the Delaware Code, therefore, conducted an extensive investigation of the findings reported in these audits to determine if any violations of criminal law had occurred.

NO PER SE CRIMINAL VIOLATIONS APPARENT

Not every act subject to criminal prosecution under Delaware law is contained within the criminal code.² A “crime” or criminal “offense” occurs under Delaware law when one engages in an act or omission that is forbidden by *any* state statute *and* that is punishable by imprisonment, fine, removal from or disqualification from holding any office or other penal discipline.³ Thus, the first step to determining whether AOA’s findings evinced that criminal violations had occurred was to discern whether the cited administrative statutes (or the cited regulations that might by explicit grant have the force of statute) provide “punishment” of some form anticipated by §233 of the criminal code. A comprehensive review of each statute or regulation alleged to have been violated clearly demonstrated that none do, and therefore those provisions do not define, of themselves, “crimes” or “offenses” that are punishable under Delaware’s penal code.⁴

² “Crimes and Criminal Procedure” are generally defined in Title 11 of the Delaware Code of 1974, as amended.

³ DEL. CODE ANN. tit 11, § 233 (2006).

⁴ For instance, the AOA concluded that “[t]he District did not comply with Chapter 75 of the Delaware Code, subsection 7511.” The statute referred to is 29 *Del. C.* § 7511 and provides, in part, that the Secretary of Education

NO OFFICIAL MISCONDUCT OR RELATED OFFENSES

The review of the AOA's findings thereafter turned to the crimes and offenses that are specifically defined in the Delaware Criminal Code. Upon examination of the findings and conclusions noted by the AOA - claims that violations of state statutes or regulatory provisions occurred - it appeared that CSD officials might have committed acts constituting the unauthorized exercise of official functions.⁵ For purposes of this review only, we presumed that violations of administrative statutes or regulatory provisions had actually occurred.⁶ Next, it was necessary to determine if other attendant circumstances were present that would evidence criminal liability. Even if a public servant commits an unauthorized exercise of official function, under Delaware law, the public servant does not incur criminal liability unless the act was done with the conscious object or purpose⁷ of obtaining a personal benefit or causing harm to another.⁸

Due to the nature of some of the activities alleged and the large sums of money involved, particularly with the middle school land purchase, there were initial concerns that some sort of "kickback," bribery,⁹ or unlawful gratuity¹⁰ or other personal benefit may have been involved. There is absolutely no evidence of this. Interviews were conducted with CSD officials and principals in the land sale or other transactions examined by the AOA. Personal bank and credit records for certain CSD officials were subpoenaed and examined. Personal tax records for certain CSD officials and for other interested parties in land or other transactions revealed that everything appeared to be properly reported. E-mail correspondence of CSD officials were

may, with certain conditions, amend certificates of necessity for school construction. The AOA's claim was that CSD violated § 7511 by not obtaining a specific amendment to the approved certificate of necessity before the purchase of the Pencader property for a new middle school. Assuming, without deciding, that such an interpretation of the statute was correct (which is questionable) and that a violation of § 7511 had occurred, the statute does not provide for any punishment and, therefore, such a violation is not a "crime" or "offense" under Delaware's penal code and no criminal liability could be imputed for such act. *See* DEL. CODE ANN. tit 11, § 233 (2006) (to define a crime a statute must require that one who violates it faces specified punishment such as a fine or imprisonment.)

5 DEL. CODE ANN. tit 11, § 1211(1) (2006)(Official Misconduct).

6 Later review would reveal that this initial presumption was not correct. *See* Reviews of Audits, pp. 10-15 in this report.

7 DEL. CODE ANN. tit 11, § 231(a) (2006).

8 DEL. CODE ANN. tit 11, § 1211 (2006).

9 DEL. CODE ANN. tit 11, §§ 1201 & 1203 (2006).

10 DEL. CODE ANN. tit 11, §§ 1205 & 1206 (2006).

retrieved and examined. Nothing untoward was found. There simply was no evidence that any person or entity obtained a personal benefit or attempted to intentionally harm any other person or entity through the supposedly unauthorized¹¹ activities alleged by the AOA.

No OTHER CRIMINAL OFFENSES

The final step in the examination of the CSD audit reports was to determine if the violations or allegedly unauthorized acts may have been specific crimes defined within the Delaware Criminal Code. The AOA's report cited alleged instances of improper transfers of public funds or miscoding of financial documents. Under certain circumstances and with the proper culpable mental state¹² such acts could violate the prohibition on tampering with or falsifying public records. We conclude that none of these statutes were violated.

There are three pertinent elements common to the Delaware criminal statutes which might be applicable if the AOA was correct in its findings. The first requires that a person cause a false entry or prevents a true entry in the business records of an enterprise or that the person otherwise conceals, makes a false entry in or falsely alters any record or other written instrument constituting a record of a public office or public servant.¹³ There is no evidence that any of the records utilized in the various transactions cited in the AOA's report contained false information. Notwithstanding whether the business practices used were optimal or even appropriate, each record or instrument that documented that funds were coming from a certain source and being used for a particular purpose was examined and found to accurately set forth the information pertinent to the transaction or activity. The second element found in criminal statutes related to falsifying records necessitates a showing that certain acts be committed without proper authority.¹⁴ As set forth in the individualized review of the AOA's findings, the various transfers

¹¹ See discussion of Audit Reports, which reveal that the major transactions in question were specifically authorized by State agencies.

¹² Generally proof of a crime involving records falsification requires evidence of an intent to defraud. "Defraud" under Delaware's criminal code means to acquire a gain or advantage by fraud. DEL. CODE ANN. tit 11, § 222(7) (2006). And, one acts by "fraud" only when one employs "an intentional perversion, misrepresentation or concealment of truth." DEL. CODE ANN. tit 11, § 222(12) (2006).

¹³ E.g., DEL. CODE ANN. tit 11, § 871 (2006)(Falsifying Business Records); DEL. CODE ANN. tit 11, §§ 873 & 876 (2006)(Tampering with Public Records)); DEL. CODE ANN. tit 11, § 877 (2006)(Offering a False Instrument for Filing).

¹⁴ E.g., DEL. CODE ANN. tit 11, §§ 873 & 876 (2006)(Tampering with Public Records)(person must engage in an

of funds or questioned transactions cited were carried out with the approval of the governmental entities required to grant such authority. The wisdom of such grants of authority or the eventual result of such financial expenditures has no bearing on the criminal review. Lastly, the records falsification statutes require a showing that acts were carried out with an “intent to defraud.”¹⁵ There is no evidence that any activity or transaction cited in the AOA’s reports was undertaken with “an intentional perversion, misrepresentation or concealment of truth.”¹⁶ The inability to meet the proper evidentiary standard as to any one of these elements would prohibit criminal prosecution.¹⁷ The fact is, however, that not one of these several elements of Delaware’s applicable criminal statutes could be proven beyond a reasonable doubt.

CONCLUSION

The allegations made in the findings and conclusions of the AOA do not support any violation of Delaware’s criminal law.

act knowing that he or she “does not have the authority of anyone entitled to grant it”).

15 *E.g.*, DEL. CODE ANN. tit 11, § 871 (2006)(Falsifying Business Records); DEL. CODE ANN. tit 11, §§ 873 & 876 (2006)(Tampering with Public Records); DEL. CODE ANN. tit 11, § 877 (2006)(Offering a False Instrument for Filing).

16 DEL. CODE ANN. tit 11, § 222(12) (2006).

17 No person may be convicted of an offense unless *each* element of the offense is proved beyond a reasonable doubt. DEL. CODE ANN. tit 11, § 301(b) (2006).

CHRISTIANA SCHOOL DISTRICT – CIVIL REVIEW

INTRODUCTION

The allegations contained in the AOA Audits also potentially gave rise to civil liability against CSD officials, if wrongdoing or malfeasance could be proven. As noted above, the key problem to bringing any action, civil or criminal, was a lack of evidence of legal violations by CSD officials. The most that can be said is that CSD may not have used the best business or accounting practices in some of their projects, and that, in hindsight, the wisdom of some CSD projects may be questionable. Nevertheless, the projects and expenditures were approved. There is no evidence that CSD administration tried to hide any of their actions from State officials. There is no evidence of monies being taken or personal gain by the CSD officials. In other words, as with the Criminal Review, there is a lack of evidence to maintain a civil case against CSD administrators. Our office considered whether the following types of civil actions could be maintained.

NO STATUTORY CIVIL ACTIONS CAN BE MAINTAINED

Several civil statutes exist that could form a basis for a civil claim of misconduct by a State official. The primary law that seemed applicable here is the Chapter pertaining to regulation of Officers and Employees of the State.¹⁸ The State Employees’ “Code of Conduct” prohibits, in pertinent part, transactions involving conflict of interest¹⁹, and the use of public office for private advancement or gain²⁰. The Code does not address or penalize negligence or poor judgment by a State official. A complaint alleging violation of the Code of Conduct is brought before the State Public Integrity Commission (PIC), which holds a hearing and can recommend sanctions ranging from a written reprimand to removal from office. A claim under the Code of Conduct is not viable because (most importantly) the facts do not exist to suggest a violation of this Chapter and, in any event, the sanctions available (which are all actions against the public official’s job) would be moot

18 DEL. CODE ANN. tit. 29, CHAPTER 58. “LAWS REGULATING THE CONDUCT OF OFFICERS AND EMPLOYEES OF THE STATE.”

19 DEL. CODE ANN. tit. 29, §5805.

20 DEL. CODE ANN. tit. 29, §5806(e).

because the key CSD administrators are no longer office holders within the District. In fact, it is doubtful that the PIC would have jurisdiction over a former official for past conduct.

We reviewed the Delaware RICO provisions, which contain provisions for both criminal and civil penalties²¹. However, to obtain civil remedies one needs to prove an underlying criminal racketeering offense.²² This cannot be done here because, as discussed in the criminal review, there is no evidence of criminal conduct.

Two other statutory causes of action were explored, *qui tam*²³ and Antitrust.²⁴ These causes of action are also not viable, in that there is no evidence of a “false or fraudulent claim”²⁵, required to maintain a *qui tam* action or “restraint of trade”²⁶ required to prove Antitrust. On the contrary, CSD was open in all of its actions, and it sought and received approval of the appropriate agencies as to its major projects and expenditures.

NO COMMON LAW CIVIL ACTIONS CAN BE MAINTAINED

Malfeasance (if any) by a public employee could potentially give rise to common law causes of action predicated upon negligence or breach of duty, or breach of the implied contract of good faith in one’s capacity as a public employee. Delaware does not appear to have ever used a common law “breach of duty” theory as to a public employee, however, in other states there is case law that such a theory can be premised upon knowing violations of specific statutes that apply to one’s office.

Again, here, we fail to have the factual predicate (that is, actual evidence of malfeasance, or of clear statutory violations) which would be necessary to proceed on a “breach” theory. As to negligence, it is not clear that the failure to use best practices constitutes actionable negligence, particularly where AOA indicates that the “best practices” it advocates are often not followed within many other state agencies, and that the kind of coding errors or sloppy bookkeeping practices found in the audits are not unique to CSD. This is not to condone these practices, but, due to the relatively common nature of procedural noncompliance, educational action seems a more appropriate remedy than legal action.

21 DEL. CODE ANN. tit. 11, §§1504 (“Criminal Penalties”), 1505 (“Civil remedies”).

22 See DEL. CODE ANN. tit. 11, §§1502(9), 1503.

23 DEL. CODE ANN. tit. 6, Chapter 12 (“False Claims and Reporting Act”).

24 DEL. CODE ANN. tit. 6, Chapter 21 (“Antitrust”).

25 DEL. CODE ANN. tit. 6, §1201(a).

There is also a fatal issue of causation. To the extent CSD arguably engaged in negligent conduct, the conduct in question was reviewed and approved by State agencies up the chain of command.²⁷ Thus, to the extent taxpayers or the State suffered harm, CSD's actions would have been causally superseded by the State's subsequent ratification of the acts in question. We note that the State agencies' reviews and approvals were in compliance with applicable laws; CSD's use of coding and disclosures to the State agencies, while not always correct (our review found no evidence deception was intended), provided the State with adequate information upon which to premise its approvals.

Finally, on the two audits reviewed (Middle School and Tuition Tax) no evidence of actual financial loss or harm to the District or the State was found. Without this, it would be impossible to prove damages—a critical element to any civil common law cause of action, even assuming such a claim were otherwise viable.

CONCLUSION

The allegations made in the findings and conclusions of the AOA audits do not, either facially or through application of relevant statutes or common law, provide support for any civil claims against CSD or its officials.

26 DEL. CODE ANN. tit. 6, §2103.

27 For example, the Department of Education approved the District's capital projects, and the Office of Management and Budget and Division of Accounting approved certain payment and funding transactions.

MAY 2006 AUDIT: THE “MIDDLE SCHOOL LAND PURCHASE”
“SPECIAL INVESTIGATION RE: PROJECTS IN 2006 CAPITAL REFERENDUM”

In this Audit, AOA concluded that CSD had failed to comply with State Law regarding the use of certificates of necessity, and that CSD did not comply with DOE regulations when it temporarily used approximately \$8 million from existing bond appropriations designated for other capital projects in the district to advance the purchase money for the middle school. These funds were reimbursed to their original projects within six months, when additional middle school bond money came in. AOA also takes issue with the manner in which the use of funds was “coded”, alleging non-compliance with the State Budget and Accounting Manual.

FACTS:

A “certificate of necessity” was issued by the Department of Education for the “new middle school” project, with a total value of \$20,270,600. CSD held a successful referendum in 2002 for the local share of the funds.²⁸ A detail sheet to the certificate of necessity allotted \$1,442,000 for the acquisition of land, and \$18,928,600 for construction costs. CSD searched and apparently could not find an appropriate site to build from the ground up, but then, in late 2004, found the 17 acre Pencader property, which had an existing building, and proposed to buy and renovate it to become the middle school. After negotiations between CSD and the owner, the purchase price for land and building was approximately \$12,000,000.

CSD then presented its proposal to the Department of Education and the State Planning Commission. A review was conducted and DOE issued a written approval of the purchase of the Pencader site for the new middle school. In addition, a formal presentation was made to the Christina School Board, along with funding information, and Board unanimously approved the purchase of the Pencader property.

FUNDING:

As noted above, because CSD did not have the \$12 million needed for the purchase in then-existing bond proceeds for the middle school at the time of the March 2005 closing (bond monies come in over time), CSD “borrowed” approximately \$8 million from existing appropriations for other capital projects in the district. Borrowing against other available appropriations is contemplated in the law.²⁹ In addition, CSD received specific approval in the 2005 bond bill to use

28 When CSD decided to purchase the land with an existing building a second referendum was unnecessary because the primary purpose for the referendum (the construction of a Middle School) was consistent with either purchasing and building, or purchasing and renovation.

29 14 Del.C. §2103, “Temporary use of funds” provides:

The school board of any district *may advance funds which by law may be used only for stated purposes and which are not immediately required* for the purpose or purposes for which the same were raised, or otherwise made available for the purpose or purposes for which an issue of bonds has been authorized. Suitable records shall be kept of the *temporary diversion of such funds*. Such funds shall be made again available to the district from the proceeds of such bonds, or from the proceeds of the sale of bond

about \$2 million in other available District funds to make up some of the difference. As for the borrowing or “temporary use” of the \$8 million from other District capital projects, CSD documented their funding plan in a March 7, 2005 Memorandum which stated, “these funds are not being transferred, but used until the remaining middle school appropriation is allocated. Once the middle school funding is available the funds used from the other projects...will be recoded to their original source....” A chart appears showing the amount to be used from each project. The memo was sent to officials at DOE and OMB.

The purchase order and payment voucher used while not the appropriate form for the purchase, accurately reflected the sources of the various funds used. These documents were also approved by the Division of Accounting. All of the funds temporarily “borrowed” from the other projects were actually returned (recoded to their original sources) in the fall of 2005.

CONCLUSION:

The Attorney General concludes that no evidence of violation of law exists in connection with the purchase of the Pencader property or the use of funds.

OCTOBER 2006 AUDIT: “TUITION TAX PERFORMANCE AUDIT

In this Audit, AOA concluded that CSD “charged \$2,773,807 of non-tuition related costs to the tuition program which may have resulted in special needs students not receiving the appropriate level of educational services.”³⁰ These costs included the renovation of a building to house the new Sarah Pyle Academy; invoices for goods, services and salaries billed to tuition tax funds.³¹

“Tuition tax” is an assessment within and between school districts for expenditures related to the education of special needs/non-traditional students in schools and programs designated for them. It differs from other school revenues, as it may be assessed without a referendum or state appropriation. CSD, like all school districts, issues a tax warrant every year in which it taxes District residents at a certain rate for certain expenditures, including tuition tax. The District also bills (and is billed by) other school districts for the tuition needs of students who attend school in the receiving district. Other than to note that the tax is computed based on “educational related expenses”³² [14 Del.C. §602(b)], the Delaware Code does not address the receiving school district’s use of the funds.

Upon review of the items and amounts the Auditor considered unrelated to tuition tax purposes and legal analysis of the claimed violations, it appears that the majority of the disputed

anticipation notes issued in anticipation of the sale of such bonds.

30 Tuition Tax Audit at p. ii.

31 AOA makes other findings that CSD did not use best practices in accounting or billing activities, but as these findings are more in the nature of recommendations for improvement than violations, they are not addressed here.

32 14 Del.C. §602(b). A 2002 amendment to this statute changed the provision regarding tuition tax billing from “costs of education” to the seemingly broader “educational related expenses.”

costs did fall within the realm of legitimate tuition expenditures related to CSD's special needs programs.

RENOVATION OF BUILDING FOR SARAH PYLE ACADEMY

The Sarah Pyle Academy is a special school for at risk students, which qualifies as a "tuition tax" program. The Sarah Pyle project was authorized by the General Assembly, which stated that CSD could "charge tuition for the support of the academy," and was to operate "at no additional cost to the State."³³ The building to be used for the school needed renovation, so CSD proposed a renovation budget funded by a combination of tuition tax, minor capital improvement funds and local funds. The total budget for renovation (capital and non-capital expenses) was approximately \$1.2 million, approximately \$573,000³⁴ of which was charged to tuition tax funds. The projected expenditures, including capital, were detailed by CSD as part of a written report on Sarah Pyle to DOE, and DOE approved the project. There was no referendum held for the capital portion of the project.

Under a DOE regulation, capital projects over \$500,000 are considered "major capital improvements." It has long been the practice that such projects go to referendum for funding, but this requirement is not explicitly stated in the Delaware Code. However, since special schools are treated differently than other schools, being financed specifically through tuition tax funds, it is a reasonable inference that tuition tax monies could be used to finance capital improvements for a special school. In fact, on DOE's "tuition billing form," which is used for inter-district billing of tuition tax, there is a line item for "capital outlay" expenditures.

CONCLUSION:

The Attorney General concludes that there is no evidence of violation of law in connection with the use of tuition tax funds for the renovation of the Pyle School.

DISALLOWED EXPENDITURES AND JOURNAL ENTRIES

AOA found that various expenditures, including invoices for goods and services, and billing for items like school security, resulted in approximately \$1.5 million of tuition tax funds being used "for non-tuition tax purposes." AOA also took issue with the manner in which certain items were coded in the State accounting system. Upon further discussion with the auditors and review of selected back-up documentation, we conclude there is no evidence of wrongdoing in payment of these expenditures. In other words, there is no affirmative evidence that funds were actually spent on improper purposes. What seems to be the case is that there are many invoices for which detailed documentation does not exist, such that it is unclear what amount of goods/services went where. AOA appropriately disallowed invoices and entries where there was insufficient documentation that

³³ 143rd G.A., HB 300, §426 (FY 2006).

³⁴ The documentation is somewhat confusing, but it appears that up to \$573,000 seems clearly to be "capital" in nature. Some other costs, such as for supplies and software do not appear to be capital expenses. The balance of the approximately \$1.2 million total cost was funded by local funds and minor capital funds.

that the goods/services actually went to tuition tax schools or projects; however, our review did not establish proof that any funds that were spent in an illegal or inappropriate manner.

As examples: a bill for custodial services was prorated among a number of schools, including, in part, several special needs schools/programs. However, the vendor's invoice did not show what amount of services went where. It was disallowed. Similarly, some supplies were delivered to CSD's central service center, a warehouse-like center from which goods are sent out to individual schools in the District. Goods from this center can go to special and non-special schools/programs alike. Items were disallowed if it was not clear from the billing that the expenditures went directly to a tuition program. However, given the way some of the invoices are written, it is also impossible to say that tuition tax schools *did not* receive the billed goods or services.

Thus, while it appears that AOA is correct in its findings that the goods/services in question cannot clearly be identified with particular tuition tax programs, and thus may be "disallowed" in the audit, this does not equate to a finding of legal violation, which would require (along with meeting other legal criteria), affirmative evidence that the goods and services were diverted or misused. This evidence does not exist.

CONCLUSION:

The Attorney General found no evidence that laws were violated in connection with the use of tuition tax funds for goods and services as noted by the Auditor.

DISALLOWED PAYROLL COSTS.

Similar to the goods and services issue, AOA found that approximately \$568,000 in salary costs were charged to tuition tax funds, which were "not readily identifiable with a tuition eligible program."³⁵ AOA claimed that 33 employees were impermissibly paid with tuition tax funds.

While there is lack of legal guidance in general on tuition tax funds, it is a reasonable inference that salaries may be charged to tuition tax funds as long as the employees are engaged in work related to tuition eligible projects or programs (special needs/non-traditional programs). Although some of CSD's documentation may have been lacking, of the 33 or so employees (mostly teachers) mentioned in the report, review of their billing and job descriptions suggests that all but three (3) of these employees did actually work in special needs programs.

The three remaining employees were identified as administrative personnel (non-teachers) who would not typically have worked on tuition tax programs. A portion of each of these individual's salaries was billed to tuition tax, for a total of approximately \$112,000. However, upon further inquiry from our office, AOA obtained "time sheets" for one administrator, which showed

35 Tuition Tax Audit at p.16. Note that AOA claimed that the amount of "non-tuition" salary charges was \$709,000 in "state funds" and \$568,000 in "local funds," however tuition tax funds are, by definition, purely local funds. So, for this purpose, the state share of the salaries is not at issue.

that she had done work with the Executive Director of Alternate Education throughout 2005, which would appear to constitute a legitimate tuition tax related expense. Thus, we are left with only two employees, for whom parts of their salary were billed to tuition tax and not documented as attributable to the program. Additional documentation was requested as to these employees, but has not yet been provided.

CONCLUSION:

The Attorney General found no evidence that laws were violated in connection with the use of tuition tax funds for salaries as noted by the Auditor.